



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

---

Mailed and Filed: AUGUST 16, 2022

IN THE MATTER OF:

Appeal Board No. 623186

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 623183 and 623184, the claimant appeals from the decisions of the Administrative Law Judge filed April 13, 2022, which granted the employer's applications to reopen A.L.J. Case Nos. 021-49300 and 021-49301, and which sustained the initial determinations disqualifying the claimant from receiving benefits, effective April 6, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$9,0720.00 in benefits recoverable pursuant to Labor Law § 597 (4); and charging the claimant with an

overpayment of Federal Pandemic Unemployment Compensation of \$7,200.00 recoverable pursuant to § 2104 (f)(2) of the Coronavirus Aid, Relief and

Economic Security (CARES) Act of 2020.

In Appeal Board Nos. 623185 and 623186, the claimant appeals from the decisions of the Administrative Law Judge filed April 13, 2022, which granted the employer's applications to reopen A.L.J. Case Nos. 021-49302 and 021-49303, and which sustained the initial determinations holding the claimant ineligible to receive benefits, effective April 6, 2020, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of \$9,0720.00 in benefits recoverable pursuant to Labor Law § 597

(4); and charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$7,200.00 recoverable pursuant to § 2104 (f)(2)

of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020.

At the combined telephone conference hearing before the Administrative Law Judge, held on April 13, 2022, testimony was taken. There was an appearance by the employer. The claimant failed to appear, either personally or through a representative.

We have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made with respect to the issue of the employer's applications to reopen A.L.J. Case Nos. 021-49300, 021-49301 and 021-49302, 021-49303. The findings of fact and the opinion of the Administrative Law Judge, insofar as they concern the issue of the employer's applications to reopen A.L.J. Case Nos. 021-49300, 021-49301 and 021-49302, 021-49303, are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board.

Our review of the record, however, reveals that the combined case should be remanded to hold a further hearing concerning the initial determinations disqualifying the claimant from receiving benefits, effective April 6, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$9,0720.00 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant

with an overpayment of Federal Pandemic Unemployment Compensation of \$7,200.00 recoverable pursuant to § 2104 (f)(2) of the Coronavirus Aid, Relief and

Economic Security (CARES) Act of 2020 and holding the claimant ineligible to receive benefits, effective April 6, 2020, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of \$9,0720.00 in benefits recoverable pursuant to Labor Law § 597 (4); charging

the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$7,200.00 recoverable pursuant to § 2104 (f)(2) of the Coronavirus Aid,

Relief and Economic Security (CARES) Act of 2020.

On appeal, the claimant has offered that he failed to appear at the April 13, 2022, hearing because he did not receive the Notice of Hearing for that hearing. In the interests of justice, the Board has determined to provide the claimant another opportunity to appear and testify.

At the further hearing, the claimant and the employer will be afforded the opportunity for mutual and respective cross-examination on the previous testimony offered at the hearings of January 24, 2022, and April 13, 2022, and that they be allowed to provide any additional testimony and evidence they may wish to offer at the further hearing to complete the record. The document labeled Hearing Exhibit 7, shall be confronted on the claimant and the claimant is to be given an opportunity to comment on and/or object to the document.

In preparation for the further hearing, the parties will review the hearing transcripts from the January 24, 2022, and April 13, 2022, hearings which were previously provided to the parties on appeal.

DECISION: In Appeal Board Nos. 623183 and 623184, and 623185 and 623186, the combined decision of the Administrative Law Judge, insofar as the employer's applications to reopen A.L.J. Case Nos. 021-49300 and 021-49301 and 021-49302 and 021-49303 were granted, is affirmed.

Now, based on the foregoing, it is

ORDERED, that the combined decision of the Administrative Law Judge, in Appeal Board Nos. 623183 and 623184, and 623185 and 623186, insofar as it sustained the initial determinations disqualifying the claimant from receiving benefits, effective April 6, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$9,0720.00 in benefits recoverable pursuant to Labor Law § 597 (4);

charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$7,200.00 recoverable pursuant to § 2104 (f)(2) of the

Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and holding the claimant ineligible to receive benefits, effective April 6, 2020, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of \$9,0720.00 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with an overpayment of Federal

Pandemic Unemployment Compensation of \$7,200.00 recoverable pursuant to § 2104

(f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a combined hearing on the issues disqualifying the claimant from receiving benefits, effective April 6, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$9,0720.00 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with an

overpayment of Federal Pandemic Unemployment Compensation of \$7,200.00 recoverable pursuant to § 2104 (f)(2) of the Coronavirus Aid, Relief and

Economic Security (CARES) Act of 2020 and holding the claimant ineligible to receive benefits, effective April 6, 2020, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of \$9,0720.00 in benefits recoverable pursuant to Labor Law § 597 (4); charging

the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$7,200.00 recoverable pursuant to § 2104 (f)(2) of the Coronavirus Aid,

Relief and Economic Security (CARES) Act of 2020, ONLY, upon due notice to all parties and their representatives; and it is further

ORDERED, that the combined hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new combined decision, on the issues, disqualifying the claimant from receiving benefits, effective April 6, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of \$9,0720.00 in benefits recoverable pursuant to Labor Law § 597 (4);

charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$7,200.00 recoverable pursuant to § 2104 (f)(2) of the

Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and holding the claimant ineligible to receive benefits, effective April 6, 2020, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of \$9,0720.00 in benefits recoverable pursuant to

Labor Law § 597 (4); charging the claimant with an overpayment of Federal

Pandemic Unemployment Compensation of \$7,200.00 recoverable pursuant to § 2104

(f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER